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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/056,593	01/23/2002	Dusan Ninkov	12996.4USU1	4707

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MERCHANT & GOULD PC
P.O. BOX 2903
MINNEAPOLIS, MN 55402-0903

EXAMINER	
LILLING, HERBERT J	

ART UNIT	PAPER NUMBER
1651	8

DATE MAILED: 04/14/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/056,593	NINKOV, DUSAN	
	Examiner	Art Unit	
	HERBERT J LILLING	1651	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *07 April 2003* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-29* is/are pending in the application.

4a) Of the above claim(s) *26-29* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-25* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☒ Claim(s) *26-29* are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) *5* .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

1. Receipt is acknowledged of the election filed without traverse on April 07, 2003.

2. Applicant has elected without traverse Group I Invention, Claims 1-25.

Group II claims have been withdrawn from consideration. Applicant will have the opportunity to have the non-elected claims rejoined in accordance with the guidelines of Tech Center 1600.

The restriction has been made FINAL.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-10 and 14-25 are rejected under 35 U.S.C. 102(b) as anticipated by Miyano et al, JP10109906 or Bessette et al. , WO0118201.

The references teach compositions that contain thymol or carvacrol in combination with a zinc salt, which anticipates the broad claimed inventions.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miyano et al, JP10109906 alone or further in view of Bessette et al., WO0118201.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

The reference to Miyano does not specifically teach the combination of thymol with carvacrol in any specific ratio. The reference does teach the combinations of the two compounds and mixtures of various blends with zinc salts have been employed as fungicides see Abstract. Miyano et al does not disclose any ratios for the combination of thymol and carvacrol.

It would have been prima facie obvious to one of ordinary skilled in the art to employ a combination of thymol and carvacrol in view of the broad teachings of Miyano et al. In further in view of Bassette et al disclosure which reference would have motivated one to employ the combination especially since the reference specifically teaches each component as an active ingredient in a pesticide, see claims 3 and 5. It is considered that since both ingredients have been employed for the same function as a pesticide, it would have been prima facie obvious to manipulate the ratios to be at least 1:1 and reasonably expect the same results absent a showing of criticality for the claimed ratios.

Thus claims for the mixture would have been **prima facie obvious** to one of ordinary skill in art since the references provide **abundant motivation** to combine the individual ingredients recited in applicants' claims to obtain desired results.

It has long been held obvious to **combine two know materials for their known function**, In re Kerhoven, 626 F.2d 846, 205 USPQ 1069 (CCPA 1980); In re Pinten, 459 F. 2d 1053, 173 USPQ 801 (CCPA 1972); In re Lindner, 457 F.2d 506, 173 USPQ 356 (CCPA 1972); In re Susi, 440 F. 2d 442, 169 USPQ 423 (CCPA 1971); In re Crockett, 279, F. 2d 274, 126 USPQ 186 (CCPA 1960).

There is strong **motivation** for one of ordinary skill to make the claimed combination, with the **expectation** of accomplishing the highly desirable results.

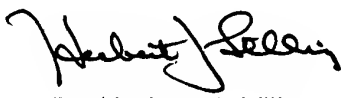
Applicant has not demonstrated in the specification by any showing that there is any improvements shown on the record which would have been **greater to an unobvious extent** than those which would have been expected from the reference teachings and that those differences were of **significant practical advantage,** In re Klosak, 455 F.2d 1077, 173 USPQ 14(CCPA 1972); In re D'Ancicco, 439 F. 2d 1244, 169 USPQ 303 (CCPA 1971).

Thusly, this Examiner has determined that the evidence of unobviousness of record in this instant application is **inadequate to outweigh the evidence of obviousness.**

5. **No claim is allowed.**

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Examiner Lilling whose telephone number is (703) 308-2034** and **Fax Number** is for applications **Before Final** (703) 872-9306 and **After Final** for applications is 703-872-9307 or SPE Michael Wityshyn whose telephone number is (703) 308-4743. Examiner can be reached Monday-Thursday from about 5:30 A.M. to about 3:00 P.M. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0196.

H.J.Lilling: HJL
(703) 308-2034
Art Unit **1651**
April 10, 2003



Dr. Herbert J. Lilling
Primary Examiner
Group 1600 Art Unit 1651